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Attorney Docket No.: DBT-005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of Loudermilk)

Serial No.: 10/039,420)

Filed: January 4, 2002)

Examiner: Chan, Wing F.)

For: Systems and Methods for Creating
Modifying, Interacting with and
Playing Musical Compositions)

Group Art Unit: 2643)

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450AMENDMENT

Sir or Madam:

In response to the office action mailed December 1, 2003, please examine the above-identified application in view of the following amendments and remarks. A petition for extension of time accompanies this amendment and is hereby requested.

6/27/2005 JEADDY 00000001 500251 10039420

1 FC:1253 1020.00 DA
2 FC:1202 1000.00 DAAdjustment Date: 12/16/2005 SDIRETA1
06/27/2005 JEADDY 00000001 500251 10039420
01 FC:1253 1020.00 CR
02 FC:1202 1000.00 CR

8/14

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Attorney Docket No.: DBT-005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Loudermilk

Serial No.: 10/039,420

Filed: January 4, 2002

For: Systems and Methods for Creating,
Modifying, Interacting with and
Playing Musical Compositions

Examiner: Chan, Wing F.

Group Art Unit: 2643

Mail Stop Deposit Account Refund Request
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REQUEST FOR REFUND

(IMPROPER CHARGE OF DEPOSIT ACCOUNT)

Sir:

Applicant respectfully requests a refund of incorrect charges to Deposit Account No. 50-0251, which are circled on the attached printout of the deposit account statement of Applicant's attorney.

Applicant submitted a Request for Reconsideration in another case (Ser. No. 10/168,696) on June 19, 2005 (copy attached hereto). Attached to this Request for Reconsideration were certain attachments the identified the above-identified application. These documents, however, as the documents make clear were attachments to the Request for Reconsideration and were not intended to be separated and processed as separate documents. Apparently due to this unintended separation, the deposit account was improperly charged.

The foregoing also can be confirmed from the file for the above-captioned application. Shortly after submission of the Request for Reconsideration, claims were entered in the above-captioned case that are completely unrelated to the subject matter of


the above-captioned case (Applicant's attorney subsequently submitted a paper to delete the improperly entered claims).

FEES CHARGES FOR WHICH REFUND IS REQUESTED

On June 27, 2005 the USPTO charged an extension fee of \$1,020.00 and an extra claims fee of \$1,000.00 to the above-captioned case. As explained above and as the attachments hereto make clear, these charges were improper, and a refund by way of credit to Deposit Account 50-0251 is requested.

If you have any questions or need additional documentation, please contact the undersigned.

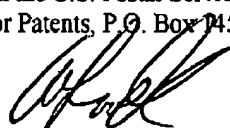
Respectfully submitted,



Alan R. Loudermilk
Registration No. 32,788
Attorney for Applicant(s)

November 8, 2005
Loudermilk & Associates
P.O. Box 3607
Los Altos, CA 94024-0607
408-868-1516

I hereby certify that the foregoing is being deposited with the U.S. Postal Service, postage prepaid, to Mail Stop Deposit Account Refund Request, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated above.





**United States
Patent and
Trademark Office**



Deposit Account Statement

Requested Statement Month: June 2005
 Deposit Account Number: 500251
 Name: LOUDERMILK AND ASSOCIATES
 Attention: C/O HEINZ AND ASSOCIATES
 Address: 200 WEST BURLINGTON AVENUE
 City: CLARENDON
 State: IL
 Zip: 60514
 Country: UNITED STATES OF AMERICA

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
06/09	153	11146488	JJL14B	2011	\$150.00	\$8,110.00
06/09	154	11146488	JJL14B	2111	\$250.00	\$7,860.00
06/09	155	11146488	JJL14B	2311	\$100.00	\$7,760.00
06/10	2	10826485	ETAG-002B	2814	\$65.00	\$7,695.00
06/13	248	11045684	NC-011	2251	\$60.00	\$7,635.00
06/13	249	11045684	NC-011	2051	\$65.00	\$7,570.00
06/17	7	10168696	JJL13.PCT.US	2252	\$215.00	\$7,355.00
06/17	8	10168696	JJL13.PCT.US	2252	-\$215.00	\$7,570.00
06/21	116	10168696	JJL13.PCT.US	2252	\$225.00	\$7,345.00
06/21	123	10641567	MC-006	2501	-\$685.00	\$8,030.00
06/21	124	10641567	MC-006	2501	\$700.00	\$7,330.00
06/27	1	10039420	DBT-005	1253	\$1,020.00	\$6,310.00
06/27	2	10039420	DBT-005	1202	\$1,000.00	\$5,310.00
06/27	5	10168696	JJL13.PCT.US	2252	-\$215.00	\$5,525.00
06/28	27	E-REPLENISHMENT		9203	-\$3,000.00	\$8,525.00

*IMPROPER
CHARGES*

START BALANCE	SUM OF CHARGES	SUM OF REPLENISH	END BALANCE
\$8,260.00	\$3,850.00	\$4,115.00	\$8,525.00

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ATTACHMENT - DO NOT SEPARATE

Attorney Docket No.: JLL13.PCT.US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Jung)

Serial No.: 10/168,696)

Filed: June 20, 2002)

Examiner: Evans, Fannie L.)

For: Apparatus and Method for)
Measuring Optical Characteristics of)
an Object or Material)

Group Art Unit: 2877)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

I hereby certify that this amendment is being sent via facsimile to 703-872-9306 on the date indicated below.

**REQUEST FOR RECONSIDERATION ON PETITION FOR ACCEPTANCE OF
PAPER AS TIMELY FILED; STATEMENT OF FACTS IN SUPPORT THEREOF;
CONDITIONAL PETITION UNDER 37 CFR 1.137**

Sir:

Applicant hereby requests reconsider of the decision on petition mailed May 3, 2005 (copy attached).

On May 11, 2004, Applicant originally mailed (not faxed, as erroneously stated in the prior petition) to the U.S. Patent and Trademark Office a petition for extension of time and an amendment as a timely response to the office action mailed December 11, 2003. The first page of the submission was a petition for extension of time, and the subsequent pages of the submission were the amendment. A copy of the postcard confirming receipt by the USPTO of the amendment and request for extension of time on May 17, 2005 is attached hereto. Unfortunately, however, the second page of the submission, which was the first page of the amendment, included incorrect caption data, and erroneously identified App. Ser. No. 10/039, 420. Apparently (based on a review of PAIR data), the PTO personnel receiving the submission separated it into two pieces, and the amendment

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for the above-identified application was erroneously processed for App. Ser. No. 10/039,420.

The foregoing has been ascertained by a review of the PAIR status data, which correctly shows the petition for the above-identified application being entered after the May 11, 2004 submission, but shows that an amendment was incorrectly entered into App. Ser. 10/039,420 after the May 11, 2004 submission. Applicant also believes that this may be confirmed by Examiner Chan (Examiner for App. Ser. No. 10/039,420), who is believed to have received the misdirected amendment.

In view of the foregoing, Applicant hereby resubmits the amendment originally mailed on May 11, 2004 (this shows the error in the caption data without correction, a point raised in the decision).

The decision on petition mailed May 3, 2005 points out that Applicant's previous petition incorrectly said that the May 11, 2004 was by fax. Applicant's attorney has reviewed the file again and confirmed that the decision was correct in this regard – the submission on May 11, 2004 was in fact by mail, which is confirmed by the certificate of mailing and by the USPTO return receipt postcard (which also confirms the date of receipt in the mailroom of May 17, 2004, also as correctly noted in the decision on petition).

Applicant's attorney believes that the factual record is now clear. Applicant mailed the May 11, 2004 petition for extension and amendment, and these were processed in the mailroom of the USPTO on May 17, 2004. Applicant's attorney incorrectly identified the caption data on the amendment. Applicant's attorney noticed this error in July 2004 based on a review of the documents on his computer (as he was traveling at the time) and quickly submitted a petition to have the paper accepted as timely filed (in his haste, he incorrectly stated that the May 11, 2004 submission was by fax).

Applicant's attorney made several mistakes (and hereby expresses his apologies for any inconvenience caused thereby). Based on the complete factual record (including the postcard confirming receipt by the USPTO), however, Applicant requests reconsideration. If this request is denied, Applicant requests that this submission be considered as a petition to revive under 37 CFR 1.137 (a) or (b).

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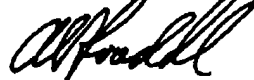
Please contact Applicant's attorney if there any questions regarding this matter. Applicant's attorney will promptly submit any additional materials or information as may be requested in order to move this application forward.

The undersigned declares that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Please charge any applicable fee (including to the extent required under Rule 1.137) to Deposit Account 50-0251. Please charge any additional fee or credit any overpayment, to that account.

Please contact the undersigned if there are any further questions.

Respectfully submitted,



Alan R. Loudermilk
Registration No. 32,788
Attorney for Applicant(s)

June 19, 2005
Loudermilk & Associates
P.O. Box 3607
Los Altos, CA 94024-0607
408-868-1516

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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

042005

Loudermilk & Associates
PO Box 3607
Los Altos CA 94024-0607

MAY 03 2005

In re Application of:
Jung et al.
Serial No.: 10/168,696
Filed: June 20, 2002
Attorney Docket No.: JJI13.PCT.US

DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the petition filed on July 11, 2004, to accept the papers filed May 17, 2004 in application serial No. 10/039,420 as having been timely filed for the instant application. The petition is being treated as a petition under 37 C.F.R. § 1.181, to withdraw the holding of abandonment of the above identified application.

The petition is **DENIED**.

The application became abandoned by operation of law (37 C.F.R. § 1.135) for failure to timely file a response to the non-final Office Action mailed on December 11, 2004. A Notice of Abandonment has not been mailed.

Petitioner asserts that a response including an amendment and a petition for a two-month extension of time was timely facsimile transmitted on May 11, 2004 in response to the Office Action of December 11, 2003. Petitioner states that on the second page of the transmission, which was the first page of the amendment, the application information for which the transmission was intended was erroneously identified as application Serial No. 10/039,420. Based on a review of PAIR, petitioner concludes that the facsimile transmission was separated into two separate papers with the extension of time entered in the instant application but the amendment incorrectly entered in Serial No. 10/039,420.

A review of the file record of Serial No. 10/039,420 reveals that an entry was made in PALM/PAIR indicating that an amendment was received on May 17, 2004, but this amendment was not of record in the image file wrapper of that application. Furthermore, a review of the file record of application serial No. 10/168,696 reveals that the extension of time was received in the mailroom on May 17, 2004 with a certificate of mailing on May 11, 2004, not a certificate of transmission on May 11, 2004 as stated in the petition.

Minor errors in the identification of an application on a paper filed with the Office, such as transposed numbers or typographical errors, can be corrected by the Office provided the correct

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identification can be quickly discovered. See M.P.E.P. § 502. However, the Office did not discover the error because the information on the first page of the amendment filed May 11, 2004 is to a completely different application. The error in listing a different application number on the amendment is not and cannot be considered as a minor error in the identification of the application as set forth in section 502 of the M.P.E.P.

Pursuant to 37 C.F.R. § 1.8(b) a correspondence not received by the Office will be considered timely filed if the party (1) promptly informs the Office of the previous transmission, (2) supplies an additional copy of the previously transmitted correspondence and certificate, and (3) includes a statement which attests on a personal knowledge basis to the previous timely transmission and a copy of the sending unit's report confirming transmission. Petitioner has not filed a true copy of the previous transmission, as evidenced by the fact that the amendment filed July 11, 2004 contained the correct information such as serial number in the caption data, or a report confirming that the facsimile transmission was successful.

Petitioner may wish to consider filing a petition under 37 C.F.R. 1.137 (a) or (b) to revive the application.

Any request for reconsideration of this decision must be submitted within 2 (two) months of the date of this decision in order to be considered timely.

Inquiries regarding this decision should be directed to Hien H. Phan, Special Program Examiner, at (571) 272-1606.


Janice A. Falcone, Director
Technology Center 2800
Semiconductors, Electrical and Optical
Systems and Components

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Patent Office Acknowledgement

S/N: 42062 Mailed by: ML Date Mailed: 5/1/04

Express Mail Label No.: 51104
in the U.S. Patent & Trademark Office was received in the
Office on the date stamped hereon:

ation	Drawings, # of Sheets	Formal	Informal
Initial Letter	<input checked="" type="checkbox"/> Request for Extension of Time		
al + copy	Transmittal Letter (Misc.)		
Cover Sheet + copy	Issue Fee Payment Transmittal		
Power of Atty.	Advance Soft Copy Order of Patents		
ire Statement	Patent/Publication References		
149	PTO Form 1083		

55L13.Pci.us

Patent Office Acknowledgement

S/N: 1C/16E646 File No.: 42062 Mailed by: ML Date Mailed: 5/1/04
Title _____
Client Name: _____

Express Mail Label No.: _____
The Following due 5/1/04 in the U.S. Patent & Trademark Office was received in the
Patent & Trademark Office on the date stamped hereon:

<input type="checkbox"/> Patent Application	Drawings, # of Sheets
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<input type="checkbox"/> Utility Transmittal Letter	<input checked="" type="checkbox"/> Request for Extension of Time
<input type="checkbox"/> Fee Transmittal + copy	Transmittal Letter (Misc.)
<input type="checkbox"/> Assign; Rec. Cover Sheet + copy	Issue Fee Payment Transmittal
<input type="checkbox"/> Declaration & Power of Atty.	Advance Soft Copy Order of Patents
<input type="checkbox"/> Info. Disclosure Statement	Patent/Publication References
<input type="checkbox"/> PTO Form 1449	PTO Form 1083
<input type="checkbox"/> Other: (1)	
(2)	
(3)	



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Attorney Docket No.: JIL13.PCT.US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Jung)

Serial No.: 10/168,696)

Filed: June 20, 2002)

Examiner: Evans, Fannie L.

For: Apparatus and Method for)
Measuring Optical Characteristics of)
an Object or Material)

Group Art Unit: 2877

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION AND FEE FOR EXTENSION OF TIME UNDER 37 C.F.R. 1.136(a)

Dear Commissioner,

Applicants hereby petition for a two-month extension of time to respond to the Office Action dated December 11, 2003. Please charge Deposit Account No. 50-0251 in the amount of \$210.00 for the extension fee. An amendment responsive to the outstanding Office Action accompanies this petition.

Please charge any additional fees due, or credit any overpayment, to Deposit Account No. 50-0251.

Respectfully submitted,

Alan R. Loudermilk

Alan R. Loudermilk
Registration No. 32,788
Attorney for Applicant(s)

May 11, 2004
Loudermilk & Associates
P.O. Box 3607
Los Altos, CA 94024-0607
408-868-1516

I hereby certify that the foregoing is being deposited with the U.S. Postal Service, postage prepaid, to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 11th day of May, 2004.

ALP
7/14

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Attorney Docket No.: DBT-005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Loudermilk)

Serial No.: 10/039,420)

Filed: January 4, 2002)

Examiner: Chan, Wing F.

For: Systems and Methods for Creating,)
Modifying, Interacting with and)
Playing Musical Compositions)

Group Art Unit: 2643

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT

Sir or Madam:

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IN THE CLAIMS:

5. (amended) An integrated, ~~unitary~~ spectrometer assembly, comprising:
a substrate having thereon a plurality of optical sensors and one or more processing elements;
a plurality of filter{s} elements fixedly positioned over at least a first group of the optical sensors fixedly and fixedly positioned with respect to the substrate, wherein the plurality of filter{s} elements provide filters that have spectral transmission characteristics over a predetermined spectrum;
an optical manifold comprising at least a fiber optic bundle having at least one input and a plurality of outputs fixedly positioned over at least certain of the plurality of filters and fixedly positioned with respect to the substrate, ~~{wherein the optical manifold has a plurality of exit windows and at least one entrance port,}~~ wherein light entering the ~~{entrance port}~~ input is transmitted to an interior portion of the optical manifold, wherein at least a portion of the light is transmitted from the ~~{exit ports}~~ outputs through at least certain of the filters for sensors sensing by at least certain of the optical sensors;
wherein light may be coupled to the ~~{entrance port}~~ input, wherein at least first spectral data corresponding to the light is generated by the one or more processing elements, wherein the spectrometer assembly is fabricated in a unitary manner ~~on~~ with respect to the substrate.
6. The assembly of claim 5, wherein the sensors comprise sensors that generate at least one signal having a frequency proportional to the light intensity received by the one or more sensors.
7. The assembly of claim 6, wherein the at least one signal comprises a digital signal.
8. The assembly of claim 7, wherein the digital signal comprises a TTL or CMOS digital signal.
9. The assembly of claim 6, wherein one or more spectral characteristics are determined based on measuring a period of a plurality of digital signals produced by a plurality of sensors.

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10. The assembly of claim 6, wherein the signal comprises an asynchronous signal of a frequency dependent upon the intensity of the received light.
11. The assembly of claim 6, wherein the one or more sensors comprise a plurality of light to frequency converter sensing elements.
12. The assembly of claim 6, wherein the filter elements comprises a plurality of filter portions having a wavelength dependent optical transmission property.
13. The assembly of claim 6, wherein a spectral analysis is performed based on light received from an object or material.
14. The assembly of claim 6, wherein the filter elements comprises a plurality of cut-off filter elements.
15. The assembly of claim 6, wherein the filter elements collectively comprise a color gradient filter.
16. The assembly of claim 6, wherein the filter elements collectively comprises a filter grid.
17. The assembly of claim 6, wherein received light is spectrally analyzed without using a diffraction grating.
18. (amended) The assembly of claim 6, wherein the light is received by a probe, wherein a plurality of measurements are taken at a plurality of distances of the probe with respect to the an object or material.
19. (amended) The assembly of claim 6, wherein a probe having one or more light sources provides light to an object or material, wherein light from the one or more light sources is received by the one or more light receivers from the object or material.
20. The assembly of claim 19, wherein one or more sensors determine a distance of the probe with respect to the object or material.
21. The assembly of claim 19, wherein one or more sensors determine an angle of the probe with respect to the object or material.
22. The assembly of claim 19, wherein one or more sensors determine a distance and an angle of the probe with respect to the object or material.

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23. The assembly of claim 6, wherein the at least one signal having a frequency proportional to the light intensity received by the one or more sensors is generated by an integrator coupled to the one or more sensors.

24. The assembly of claim 6, wherein the sensors comprise a photo diode array.

25. (amended) An integrated, ~~unitary~~ spectrometer assembly, comprising:
a substrate having thereon a plurality of optical sensors and one or more processing elements;

a plurality of filter[s] elements fixedly positioned over at least a first group of the optical sensors ~~fixedly~~ and fixedly positioned with respect to the substrate, wherein the plurality of filter[s] elements provide filters that have spectral transmission characteristics over a predetermined spectrum;

an optical manifold fixedly positioned over at least certain of the plurality of filters and fixedly positioned with respect to the substrate wherein the optical manifold has a plurality of exit windows ports and at least one entrance port, wherein light entering the entrance port is transmitted to an interior portion of the optical manifold, wherein at least a portion of the light is transmitted from the exit ports through at least certain of the filters for sensors sensing by at least certain of the optical sensors;

wherein light may be coupled to the entrance port, wherein at least first spectral data corresponding to the light is generated by the one or more processing elements, wherein the spectrometer assembly is ~~fabricate~~ fabricated in a unitary manner ~~on~~ with respect to the substrate.

26. The assembly of claim 25, wherein the sensors comprise sensors that generate at least one signal having a frequency proportional to the light intensity received by the one or more sensors.

27. The assembly of claim 26, wherein the at least one signal comprises a digital signal.

28. The assembly of claim 27, wherein the digital signal comprises a TTL or CMOS digital signal.

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29. The assembly of claim 26, wherein one or more spectral characteristics are determined based on measuring a period of a plurality of digital signals produced by a plurality of sensors.
30. The assembly of claim 26, wherein the signal comprises an asynchronous signal of a frequency dependent upon the intensity of the received light.
31. The assembly of claim 26, wherein the one or more sensors comprise a plurality of light to frequency converter sensing elements.
32. The assembly of claim 26, wherein the filter elements comprises a plurality of filter portions having a wavelength dependent optical transmission property.
33. The assembly of claim 26, wherein a spectral analysis is performed based on light received from an object or material.
34. The assembly of claim 26, wherein the filter elements comprises a plurality of cut-off filter elements.
35. The assembly of claim 26, wherein the filter elements collectively comprise a color gradient filter.
36. The assembly of claim 26, wherein the filter elements collectively comprises a filter grid.
37. The assembly of claim 26, wherein received light is spectrally analyzed without using a diffraction grating.
38. (amended) The assembly of claim 26, wherein the light is received by a probe, wherein a plurality of measurements are taken at a plurality of distances of the probe with respect to ~~the~~ an object or material.
39. (amended) The assembly of claim 26, wherein a probe having one or more light sources provides light to an object or material, wherein light from the one or more light sources is received by ~~the~~ one or more light receivers from the object or material.
40. The assembly of claim 39, wherein one or more sensors determine a distance of the probe with respect to the object or material.
41. The assembly of claim 39, wherein one or more sensors determine an angle of the probe with respect to the object or material.

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42. The assembly of claim 39, wherein one or more sensors determine a distance and an angle of the probe with respect to the object or material.
43. The assembly of claim 26, wherein the at least one signal having a frequency proportional to the light intensity received by the one or more sensors is generated by an integrator coupled to the one or more sensors.
44. The assembly of claim 26, wherein the sensors comprise a photo diode array.

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REMARKS

Claims 1-54 were in the application. Claims 5-44 were indicated as allowable, subject to certain informalities and on the basis of obviousness-type double patenting. Applicant has amended certain of the claims to address the informalities noted by the Examiner and for purposes of clarity and to otherwise put claims 5-44 in condition for allowance. Applicant proposes to overcome the obviousness-type double patenting rejection with a terminal disclaimer to be submitted under separate cover.

Please charge any additional fees due, or credit any overpayment, to Deposit Account No. 50-0251.

No new matter has been added.

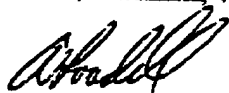
Respectfully submitted,



Alan R. Loudermilk
Registration No. 32,788
Attorney for Applicant(s)

May 11, 2004
Loudermilk & Associates
P.O. Box 3607
Los Altos, CA 94024-0607
408-868-1516

I hereby certify that the foregoing is being deposited with the U.S. Postal Service, postage prepaid, to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 11th day of May, 2004.



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